



## INTERIOR BOARD OF INDIAN APPEALS

Turtle Mountain Community College v. Acting Aberdeen Area Director,  
Bureau of Indian Affairs

34 IBIA 131 (10/04/1999)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

TURTLE MOUNTAIN COMMUNITY	:	Order Dismissing Appeal as Moot
COLLEGE,	:	
Appellant	:	
v.	:	
	:	Docket No. IBIA 98-108-A
ACTING ABERDEEN AREA	:	
DIRECTOR, BUREAU OF	:	
INDIAN AFFAIRS,	:	
Appellee	:	October 4, 1999

Appellant Turtle Mountain Community College seeks review of an April 28, 1998, decision of the Acting Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning the reprogramming of Fiscal Year (FY) 1997 and 1998 scholarship funds under the Tribal Priority Allocation (TPA) system. The Board of Indian Appeals (Board) dismisses this appeal as moot.

The administrative record shows that the Superintendent, Turtle Mountain Agency, BIA (Superintendent), and representatives of the government of the Turtle Mountain Band of Chippewa Indians (Tribe) met, discussed, and developed the TPA budget for FY 1997 during the latter part of 1995. In submitting its allocation request, the Tribe listed all programs as priority 1. The budget system would not accept all programs as priority 1, so it ranked the programs in the order in which they appeared on the list. Scholarships was the first program on the list. Therefore, the bulk of the increase in funding received for FY 1997 went to scholarships. The Superintendent discussed this situation with the Tribe, and a joint decision was made to reprogram funds from the scholarship program to other programs which had been negatively impacted in the FY 1997 budget process.

In planning for FY 1998, the Superintendent and the Tribe used figures which they believed were correct, but which turned out to be significantly higher than the amounts ultimately requested by the President. Because the scholarship program was still ranked as priority 1 at that time, this program fared the best in the budget process. The Tribe and BIA decided to attempt to maintain funding for all programs at the minimum FY 1997 level. Again, funds were reprogrammed from the scholarship program in order to accomplish this goal.

On January 29, 1998, Appellant filed a notice of appeal with the Area Director challenging the Superintendent's reprogramming of scholarship funds for FY 1997 and 1998. The Area Director issued the decision at issue on April 28, 1998. He dismissed the appeal as to FY 1997 as being untimely, and denied it as to FY 1998 on the grounds that the matter had been resolved through the restoration of some funds to the scholarship program. This appeal followed.

Appellant seeks review of decisions concerning the allocation of FY 1997 and FY 1998 funds. FY 2000 has recently begun. The Board concludes that this appeal has been rendered moot by the passage of time. 1/

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Aberdeen Area Director's April 28, 1998, decision is dismissed as moot.

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//original signed

Kathryn A. Lynn  
Chief Administrative Judge

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//original signed

Anita Vogt  
Administrative Judge

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1/ Upon reviewing this appeal, the Board discovered that the Tribe had not been served with the parties' filings. If the Board had not concluded that this appeal was moot, the parties would have been required to serve the Tribe, and the Tribe would have been given an opportunity to respond.

Appellant would not even then have been assured that the Board would reach the merits of this appeal. There are several procedural problems with this case, any one of which might have resulted in its dismissal in whole or in part. These problems include, but are not limited to, the timeliness of Appellant's appeal to the Area Director concerning the reprogramming of FY 1997 funds, and whether that appeal was already moot when it was filed; Appellant's standing to challenge a joint Tribal-BIA decision (see Shoshone-Bannock Tribal Tax Commission v. Acting Portland Area Director, 30 IBIA 185 (1997)); and Appellant's probable failure to have exhausted tribal remedies in regard to an intra-tribal dispute (see, e.g., Displaced Elem Lineage Emancipated Members Alliance v. Sacramento Area Director, 34 IBIA 74, 77 (1999), and cases cited therein).